UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL ALAN CROOKER, Plaintiff, v. ASSOCIATED RECOVERY SYSTEMS, Defendants.	Civil No. 08cv0630 JAH (JMA) **ORDER DENYING PLAINTIFF'S MOTION FOR REMAND TO STATE COURT [DOC. NO. 7]**

BACKGROUND

Plaintiff originally filed a complaint in Superior Court of the State of California for the County of San Diego on February 29, 2008, alleging violation of the federal Fair Debt Collection Practices Act 15 U.S.C § 1692 ("FDCPA"). Associated Recovery Systems is named as defendant. The matter was removed to the District Court upon Defendant's notice of removal filed on April 7, 2008. Plaintiff appealing pro se, filed the pending motion to remand, *nunc pro tunc,* on April 23, 2008. Defendant filed a response on May 12, 2008. The motion was set for hearing on June 9, 2008, but was taken under submission without oral argument.

DISCUSSION

Plaintiff argues remand is warranted because, as the Plaintiff in the case, his choice of forum should be deferred to and the Court should not exercise supplemental jurisdiction over his state law claims.

I. Legal Standard

The federal court is one of limited jurisdiction. See Gould v. Mutual Life Ins. Co. v. New

York, 790 F.2d 769, 774 (9th Cir. 1986). As such, it cannot reach the merits of any dispute until it confirms its own subject matter jurisdiction. Steel Co. v. Citizens for a Better Environ., 118 S.Ct. 1003, 1012 (1998). "Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Id. (quoting Ex parte McCardle, 74 U.S. (7 Wall.) 506, 614 (1868)). District courts must construe the removal statutes strictly against removal and resolve any uncertainty as to removability in favor of remanding the case to state court. Boggs v. Lewis, 863 F.2d 662, 663 (9th Cir. 1988).

Removal jurisdiction is governed by 28 U.S.C. § 1441 *et seq*. A state court action can only be removed if it could have originally been brought in federal court. Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). Thus, for an action to be removed on the basis of federal question jurisdiction, the complaint must establish either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on the resolution of substantial questions of federal law. See Franchise Tax Board of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 461 U.S. 1, 10 (1983). The plaintiff is the master of the claim, and federal jurisdiction exists only when a federal question is presented on the face of the properly pleaded complaint. See Caterpillar, 482 U.S. at 392. The Court determines its jurisdiction from the complaint as it existed at the time of removal, not as subsequently amended. Libhart v. Santa Monica Dairy Co., 592 F.2d 1062, 1065 (9th Cir. 1979). Further, removal cannot be based on a counterclaim. Takeda v. Northwestern Nat'l Life Ins. Co., 765 F.2d 815, 821 (9th Cir. 1985).

The defendant has the burden of establishing that removal is proper and supporting its jurisdictional allegations with competent proof. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992) (per curiam); Nishimoto v. Federman-Bachrach & Assocs., 903 F.2d 709, 712 n.3 (9th Cir. 1990). In addition, the defendant must file a timely notice of removal. 28 U.S.C. § 1446(b). The notice of removal must be filed within 30 days after receipt of a copy of the initial pleading if removability can be determined from its text. Id.

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II. Analysis

Plaintiff contends that the case should be remanded to state court. He argues that his choice of jurisdiction should prevail. Although unclear, it appears Plaintiff further contends that the Court should not exercise supplemental jurisdiction over the state law claims in the lawsuit.

Defendant contends that removal to federal court was appropriate because Plaintiff's complaint alleges violation of the federal FDCPA. Defendant further argues, because federal courts have original jurisdiction over all civil actions that arise under laws of the United States, it has a right to a federal forum. Defendant also contends that under Supreme Court rulings, federal courts have supplemental jurisdiction allowing them to hear and decide state law claims along with federal law claims when they are so related they are part of the same controversy. Defendant maintains additionally, although the federal court has the discretion to abstain from hearing state law issues, abstention is not applicable in this case. Defendant argues that abstention is a very narrow exception and that it is unnecessary to abstain from all cases of state law.

Defendant removed this action from state court on the basis of federal question jurisdiction pursuant to 28 U.S.C. § 1441(c) in that Plaintiff alleges violation of the federal FDCPA. Any civil action "founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties," (28 U.S.C. § 1441(b).) Title 28 U.S.C. § 1441(c) states in part that:

> Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or in its discretion, may remand all matters in which State law predominates.

Although Plaintiff asserts state laws claims in addition to his FDCPA claims, the federal claims predominate. The Court finds Defendant appropriately removed the present case to district court.

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Plaintiff also contends that the Court should nevertheless decline to exercise supplemental jurisdiction over all state law claims. A court may decline to exercise supplemental jurisdiction if:

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). This Court finds that the claims in this case do not meet the criteria of § 1367(c) to warrant declining supplemental jurisdiction.

Due to the federal nature of Plaintiff's claims and the Court's unimpeded discretion to exercise supplemental jurisdiction over state law claims, this Court finds that Defendant's motion to remove was proper. Accordingly, Plaintiff's motion to remand is DENIED.

CONCLUSION

Based on the foregoing, **IT IS HEREBY ORDERED** Plaintiff's motion for remand is **DENIED**.

DATED: August 6, 2008

JOHN A. HOUSTON
United States District Judge